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THE INTERIM

SEPTEMBER 1998

HELENA, MONTANA

VOL. XI NO. 16

INTERIM PROPERTY TAX COMMITTEE

Committee Refines the Menu of Alternatives...With only one public hearing remaining, the work of the Interim Property Tax Committee is virtually complete. The members of the Committee favor three primary alternatives and several lesser options. The three primary alternatives are:

- 1) a change in the approach to valuation of Class 4 property, from "current market value" to "acquisition value";
- 2) a combination of "cut and cap", rate reduction, and homestead exemption; and
- 3) comprehensive property tax reform, accompanied by a 4% statewide, general retail sales tax.

The Acquisition Valuation Option...Some members of the Committee favor a change in the method of valuing Class 4 property from the current market value approach to an acquisition value approach, a la California or Florida. The acquisition value approach most seriously scrutinized by the Committee has the following components:

- the 1993 value established by the Department of Revenue would be the base year value;
- the base year value could increase by the lesser of CPI inflation or 1% annually;
- property newly constructed after 1993 or converted from non-Class 4 classification to Class 4 after 1993 would be valued at the "acquisition value" of the property at the time the property changed hands or was reclassified as Class 4.

The Combination Option...Some members of the Committee favor a combination of changes, including changes to mill levies, the statutory tax rate, and the (amount

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of) market value of owner-occupied homes subject to property taxation. The combination option has the following components, although the precise changes in any of the components has not been decided:

- reducing the number of mills levied statewide for K-12 education from 95 mills downward to 92 mills;
- reducing statutory tax rate applicable to Class 4 property from 3.816% (TY 1998 rate) of market value to 3.25% of market value; and
- the partial exemption from property taxation of the market value of an owner-occupied home, specifically 25% of the first \$100,000 or less of market value.

To implement this option, the market value of property as determined by the Department of Revenue for tax year 1997 would be fully effective for tax year 1999.

The Comprehensive Reform Option... The Committee created a subcommittee (of member volunteers) on property tax reform and sales taxation that met in Billings in mid-July. The Subcommittee reviewed past comprehensive reforms, e.g. SB 235 (1993) and SB 258 (1997); discussed the myriad of issues revolving around the tax base, the allocation of revenue, revenue distribution mechanisms, and so forth; and generally agreed on the outlines of a comprehensive reform proposal. The general proposal favored by some Subcommittee members has the following components:

- the elimination of approximately \$400 million in annual property taxes currently collected for and expended on the support of public education. The reductions would be effected in several ways, including the elimination of statewide mill levies for K-12 education and the university system, higher state support of school transportation and school retirement costs, and the partial exemption of the market value of owner-occupied residences;
- the total exemption from property taxation of property commonly known as "business equipment", resulting in an additional reduction of \pm \$100 million annually in property taxes;
- further restricting the potential for growth in revenue/expenditures for local governments and K-12 schools;
- the enactment of a statewide, general retail sales tax with the following characteristics:
 - a rate of 4%;
 - exempting food, prescription drugs and medical services from the tax; and
 - establishing a broad base of taxable goods and services, including most professional services;
- providing sales tax rebates to low-income individuals and families through a refundable income tax credit; and
- ensuring virtual "revenue neutrality" in state/local taxation.

Some members of the Subcommittee plan on considering changes/refinements to the basic proposal, including:

- providing some (\pm \$100 million) individual income tax relief and less property tax relief (\$400 million rather than \$500 million);
- providing a larger income tax rebate and extending the eligibility for a rebate to all resident income tax payers, but including food in the sales tax base; and
- targeting some additional property tax relief to homeowners.

Issues Remaining...The Committee has considered expanding property tax relief measures targeted at Montana's elderly homeowners and lower-income homeowners. Further attention will be afforded this option. The Committee has also considered another proposal by Senator Stang, specifically, expanding the local option "resort area" sales tax to other communities by eliminating the resort area requirement and the population thresholds.

Options arising since the August 6 and 7 meetings include:

- restructuring the way in which "suburban tracts" or "nonproductive agricultural land" are valued and taxed. Basically, these are parcels between 20 and 160 acres considered to be nonproductive agricultural land. Currently, these parcels are valued at seven times the value of average grazing land, then taxed at 3.816% (1998) of the product value. The result is that these parcels are taxed much less than other residential or recreational land and, in some cases, even less than productive agricultural land. Speculation on the effect of such tax treatment ranges from little impact to the wholesale promotion of subdivision and out-of-state marketing.
- providing some level of "exemption" for business equipment. Initially, Committee members have considered a maximum \$25,000 exemption per taxpayer. That level of exemption may change after further review.
- allowing homeowners and businesses to pay their property taxes on a monthly basis rather than semiannually.
- revising the penalty and interest provisions attendant to the late payment of property taxes. Currently, the penalty is 2% of the tax due and the interest rate is 5/6 of 1% of the amount of tax due for each month of delinquency. The proposal would increase the penalty to 5% of the tax due and increase the interest rate to 1% per month of delinquency; and
- allowing incorporated municipalities to impose a local option accommodations tax, piggy-backed on the current 4% "bed tax" imposed by the state. The allowable rate might be a maximum of 2% and the purposes for which local option bed taxes could be used would be specific and limited.

Other Activities...A two-member delegation of the Committee met on August 25 with the Big Sky Owners Association. The BSOA wished to make their concerns re: property taxes known to the Committee and requested the special meeting because

most of the Association's members were not in the state when the full Committee met in Bozeman in March.

Final Meeting Planned...Monday, September 14 marks the final meeting of the Committee. The Helena venue affords the Committee a final opportunity to review and refine the alternatives and to hear reactions from all "the usual suspects" before concluding its work. The meeting will be in Room 104 of the Capitol and is scheduled to begin at 9 a.m.

GAMBLING STUDY COMMISSION

Commission Holds Final Meeting...The Gambling Study Commission held its final meeting of the interim on August 17 in Helena. The Commission reviewed the draft final report from Dr. Paul Polzin and other members of the team who have been conducting the research under contract since last December.

Public Meeting Rescheduled...To allow the study team additional time to complete their report, and also to allow for more thorough analysis of the findings by the Commission members as well as other interested parties, a public presentation originally scheduled for September 9 has been postponed until September 30. At the time of this writing, the "Briefing" to the Governor and attending legislators will take place in the Governor's Reception Room in the State Capitol, beginning at 9:30 a.m.

For further information, please contact Research Analyst Stephen Maly at 444-3064 or by e-mail at <smaly@state.mt.us>.

ENVIRONMENTAL QUALITY COUNCIL

EQC to Meet in September in Helena...The Environmental Quality Council (EQC) will meet on Thursday, September 10 in Helena. Agenda items include a review of Subcommittee recommendations, a review of information on state agency enforcement and compliance, an update on the natural resource damages lawsuit settlement, and other Council business. The EQC will wrap up its interim study process in October. The EQC Subcommittee activities are set out below.

Montana Growth Issues...The Growth Subcommittee met in Helena on August 7 to review the draft report to date and provide additional guidance to staff on topics and issues of particular interest. The Subcommittee is focussing its efforts on finding ways to encourage community planning, and it has selected several topics and legislative issues for further research. A staff update on research progress will be provided to the Growth Subcommittee at the close of the September 10 meeting of the full EQC.

The next full meeting of the EQC Growth Subcommittee is scheduled for Monday, September 28 in Room 104 of the State Capitol. For further information about the meeting or to be put on the Subcommittee mailing list, contact Mary Vandenbosch, EQC staff, at 444-5367 or by e-mail at <mvandenbosch@state.mt.us>.

EQC Waste Tire Study...The EQC Waste Tire Study Working Group held its final meeting at the Capitol on August 14. The group reviewed and made comments on the draft study report and held discussions regarding the conclusions and findings of the study. Staff is currently incorporating the comments into a draft final report that will be circulated to members and to the EQC in advance of the Council's September 10 meeting. At the September EQC meeting, the report will be presented for adoption, modification, or rejection. In accordance with SB 332, the EQC is to report the results of the study, including any recommendations for legislation, to the legislature by October 1, 1998.

Persons interested in obtaining a copy of the draft final report and the draft findings and recommendations are encouraged to contact Larry Mitchell, EQC staff, at 444-1352 or by e-mail at <lamitchell@state.mt.us>.

Water Policy Subcommittee...The Water Policy Subcommittee met August 4 in Helena. The Subcommittee continued its work on the Council's water-related statutory requirements by providing advice to DNRC on its proposed new chapter of the State Water Plan (focussing on ground water), discussing further water right issues in the Gallatin Valley, discussing proposed legislation related to the FWP instream flow leasing program, and making decisions regarding what the Subcommittee was willing to consider in recommendations to the Council. The Subcommittee will meet again September 4, in Helena, to prepare its draft water policy, HB 546 oversight responsibilities, and FWP instream flow recommendations for presentation to the Council.

For more information, contact Kathleen Williams, EQC staff, at 444-3742.

For more information about the September 10 meeting of the EQC, please contact the EQC staff at 444-3742 or via the Internet at <teverts@state.mt.us>

LEGISLATIVE SERVICES DIVISION

Reports Available...The following reports are currently available from the Legislative Services Division. To obtain a copy, please contact the LSD Library at 444-3064 or by e-mail at <efurbush@state.mt.us>.

A Legal Analysis of the Electric Utility Industry Restructuring and Customer Choice Act's Reciprocity Provision, February 1998, Todd Everts

Legal Issues Surrounding Land Grant Railroad Rights-of-Way, August 1998, Eddy McClure

LEGISLATIVE COUNCIL

Council to Meet in September...The Legislative Council will meet September 11. As of this writing, the agenda includes the following issues:

Land Exchange Issues: The Council is tentatively scheduled to review a possible sale of land on the Boulder campus of DPHHS to Jefferson County. The Council may also receive an update on an inventory of non-trust lands that it requested last year.

Legislative Improvement: The Legislative Improvement Subcommittee is scheduled to meet September 10 to complete work on the items assigned to it. Sen. Halligan will report on the Subcommittee deliberations. This item includes a discussion of the interim reorganization proposal described at length in the June issue of *THE INTERIM*.

Capitol Renovation Update: The Council will receive a briefing on the latest status of plans for Capitol renovation and the move from the Capitol by legislative agencies and others in 1999. Discussion will include implications for session scheduling.

Computer System Plan: In accordance with 5-11-405, MCA, the Council must approve and adopt the legislative branch computer system plan. The Council will review the plan recommended by the Computer Systems Planning Council at its September 2 meeting.

Budget Review and Approval: The Council will approve budgets for the Legislative Services Program and the Interim Committees and Activities Program. Clayton Schenck will present an overview and analysis of Branch budgets. Rep. Mercer will present the Management Subcommittee budget recommendations formulated at a meeting on September 4. (This meeting date may be changed to enable more member participation.)

Prices for Legislative Proceedings: 5-11-212, MCA, requires that legislative proceedings be provided for an amount prescribed by the Legislative Council. The staff recommendation is to keep costs the same as last session with the exception of the cost of mailing whole sets.

Code Commissioner Report: 1-11-204, MCA, provides that the Code Commissioner prepare and publish a report on changes made during continuous recodification. Greg Petesch will present the report that will include changes recommended to be accomplished by bill. The Legislative Council should designate a sponsor for the bill.

Montana in the Global Economy Conference: The Council will consider a request forwarded to the Council through Stephen Maly, LSD research analyst, to officially co-sponsor a conference entitled "Montana in the Global Economy" that is scheduled for mid-November.

To Meet in November...The Council's next meeting is scheduled for November 13, the day before the presession caucus date of November 14.

COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS

Committee Makes Major Decisions...Continuing to refine its preliminary recommendations, the Committee on Public Employee Retirement Systems (CPERS) made some significant decisions at its meeting August 5 that will shape the future of the Public Employees' Retirement System (PERS).

CPERS will be recommending to the full Legislature that PERS be modified to allow plan members to choose between a defined benefit plan (the current PERS) or a new defined contribution plan. The new defined contribution plan would allow members to control their own investments and would mean that members' retirement income would depend entirely on the total contributions to their accounts and the gains or losses on their investments.

The Committee's major decisions were:

- to defer until the next interim further consideration of options to use retirement contributions to help retirees pay for health insurance coverage on a tax-free basis;
- that all current PERS members (not just the non-vested PERS members with less than 5 years of service) would be given a choice to either stay in the current defined benefit plan or to transfer to the defined contribution plan; and
- that the Public Employees' Retirement Board would be the trustees and administrators of the new defined contribution plan.

Committee Holds Second August Meeting...The Committee met again on August 31 to further discuss administrative costs, educational programs, and an implementation schedule. Information about this meeting will be forthcoming in the October issue of **THE INTERIM**.

For more information about CPERS or the August 31 meeting, contact Sheri Heffelfinger at 444-3064 or through interagency ZipOffice or e-mail at <sheffelfinger@state.mt.us>.

SUBCOMMITTEE ON VETERANS' NEEDS

Subcommittee Holds Final Meeting...The Joint Interim Subcommittee on Veterans' Needs finished its interim work at its third and final meeting on August 18, 1998.

The Subcommittee's recommendations to the Legislature will include the following:

- a bill to provide special license plates for National Guard retirees and Legion of Valor members;
- a bill to allow Legion of Valor members to purchase in-state conservation fishing licenses;
- a letter to the Joint Committee on Postsecondary Education Policy and Budget opposing a move to repeal the National Guard tuition waiver program at the University, which provides that the University System may fund it on a voluntary basis;
- a letter to the Legislative Finance Committee opposing a move to de-earmark the cigarette tax money, which is used to help fund the Montana Veterans' Home in Columbia Falls and the Eastern Montana Veterans' Home in Glendive;
- a bill to close a loop hole in the veterans' preference laws;
- a bill to clarify statutes governing veterans' burial or interment as they relate to costs and responsibilities; and
- a bill to make the Joint Interim Subcommittee on Veterans' Needs a permanent statutory interim committee.

CORRECTIONAL STANDARDS AND OVERSIGHT COMMITTEE

Committee Holds 2-Day Meeting...The Correctional Standards and Oversight Committee met August 20 and 21 and heard revised population projections and budget proposals for the Department of Corrections (DOC) as well as the Department's preliminary legislative proposals. The Committee is considering draft legislation for detention center standards and inspection, for the repeal of the Extended Jurisdiction Prosecution Act, and to allow the retention of certain Youth Court records for research and evaluation purposes.

Department Presents Budget Proposals...The DOC presented a revised estimate of its fiscal years 2000-2001 budget proposals and of its population projections based on preliminary fiscal year end 1998 data.

The updated general fund request for the biennium is \$36,363,848 in present law adjustments and in new proposals compared to \$57,514,910 presented at the June 19 meeting. The major difference from the previous total is due to the reduced number of contract beds necessary for adult males; reduced external medical costs;

fewer training, legal, juvenile transportation, and boot camp staff requests; and abandoning the future use of the Xanthopoulos Building at Warm Springs. These reductions were somewhat offset by increased contract beds for females and pre-release beds, increased intensive supervision equipment, increased staff at Pine Hills Youth Correctional Facility for boys, and increased Probation and Parole staff requests.

Department Presents Revised Population Projections...The Corrections' Population Management Plan presents actual fiscal year end populations and an estimated institutional population distribution based on new total population projections updated with preliminary fiscal year 1998 data. The population projections for adult males for fiscal year end 1999 was reduced 188 persons to 2,750; for fiscal year end 2000, down 297 persons to 3,035; and for fiscal year end 2001, down 476 persons to 3,281. The reductions are a result of a slowing rate of increase in admissions. As a result of this reduction in the projected numbers in the adult male institutional population, the DOC amended its distribution of adult males so that the Xanthopoulos Building on the Warm Springs campus and the proposed Southwest Montana facility will no longer be utilized. Further adjustments in the distribution consist of additional contract beds, including out-of-state beds (in FY 99); the HB 83 Private Prison in Shelby (less beds in fiscal year 2002 and more beds in fiscal years 2001 and 2003); and additional pre-release center beds.

The adult female population projections, on the other hand, skyrocketed with a projected difference of an additional 41 women in fiscal year 1999, 56 additional women in fiscal year 2000, and 69 additional women in fiscal year 2001, for a projected total female institutional population of 323 fiscal year end 2001. This results in a proposed increased population distribution at Montana Women's Prison of 142 in fiscal years 2002 and 2003 (if the \$9.4 million long-range building proposal is approved), but the more immediate effect is in increased contracted beds, pre-release center beds, and intensive supervision next biennium.

Juvenile institutional population projections were also increased by 29 and 31 juveniles over the fiscal years 2000 and 2001, respectively, for an estimated fiscal year end institutional population of 327 youths (this does not include youth in out-of-home care or residential treatment facilities). The plan differs from the plan presented on June 19 with the DOC proposing to increase Pine Hills from the currently approved 120 beds and seeking approval for an additional 24 beds. The most recent plan increases secure contract beds and reduces the Aspen Youth Alternatives to a constant 48 beds instead of contracting for 64 beds from fiscal year 1998 as shown in the plan presented in June. The plan also reduces the total number of transition center and independent living beds from the numbers presented in June.

The population projections are based on preliminary fiscal year end figures and may be adjusted once again before the Governor's budget is final. By the 1999 Legislative session, there also will be one-half of fiscal year 1999 data that may be considered. The projection methods are different for each of the populations. The methods for the smaller populations for juveniles and adult females are especially problematic statistically. The tension will be knowing what the projections are to a

certain level of comfort and where is the most appropriate distribution of resources.

Requests for Capitol Projects...The DOC has made preliminary requests of \$17,370,873 for capital projects in the next biennium. The proposed projects include:

- \$9,371,873 for the Montana Women's Prison expansion;
- \$2,225,000 for the Pine Hills Youth Correctional Facility campus improvements and new 24-cell housing unit;
- \$574,000 in additional spending authority for the men's prison 96-cell central Reception Unit (federal funds);
- \$2,100,000 for the men's prison Parole Board/ Command Post;
- \$2,000,000 for the men's prison Training/Investigation Building;
- \$200,000 for the men's prison execution chamber;
- \$275,000 for DOC environmental compliance projects;
- \$400,000 for the men's prison water well replacement; and
- \$225,000 for demolition at the Pine Hills Youth Correctional Facility.

Committee to Meet in Bozeman...The Committee will hold its final meeting on Saturday, September 12 in Bozeman, following the Burton K. Wheeler Center fall conference on "The Future of Montana's Corrections System." The Committee will hear information on the Intensive Supervision Program and prerelease center audits, complete its actions on subcommittee recommendations, and make its final findings.

For more information on the Bozeman meeting, please contact Susan Byorth Fox at 444-3064 or by e-mail at <sfox@state.mt.us>.

REVENUE OVERSIGHT COMMITTEE

Committee Reviews Proposals to Revise Taxation of Electric and Natural Gas Utilities and Other Class Nine Property...Senate Bill No. 390 and Senate Bill No. 396 directed the Revenue Oversight Committee to examine the taxation of electric and natural gas utilities in a competitive environment. A major part of the study has looked at the property tax implications of competition for all centrally assessed property as well as for rural electric cooperatives and rural telephone cooperatives. At its July 24 meeting, the Revenue Oversight Committee reviewed two proposals to revise the taxation of electric and natural gas utilities. The proposals are consistent with goals adopted by the Committee at its May 29, 1998, meeting:

- (1) that a revision in the tax scheme should be "competitively neutral" so that customer choice is not affected by tax policy; and
- (2) that the new scheme is revenue neutral, to the extent possible, with respect to customers, the industry, and taxing jurisdictions.

Committee Looks at Tax Rate Reduction...The first proposal the Committee looked at recommends a reduction in the property tax rate of class nine property (15-6-141, MCA). Class nine property (electric and natural gas utilities,

telecommunications, and oil and gas pipelines) is taxed for property tax purposes at 12% of market value. The gist of the proposal would be to reduce the tax rate on class nine property from 12% to 6% and to assess new taxes to make up for the loss in property tax revenue. The new taxes would include a 5% excise tax to be paid by consumers of electricity, natural gas, and intrastate telecommunications services and a gross receipts tax on oil and gas pipelines. In addition, the proposal would increase the electric energy producers' license tax (15-51-101, MCA) from \$0.0002 to \$0.0008 per kilowatt hour to ameliorate the impact of reducing the tax rate on "foreign" utilities (Portland General, Puget Sound Power and Light, Washington Water Power, and Montana Power Colstrip Unit 4) that have an ownership interest in the Colstrip generating units but who do not serve customers in Montana.

Committee staff presented an analysis of the revenue implications associated with reducing the tax rate on electric and natural gas utilities and imposing an excise tax on the final consumption of electricity and natural gas. Estimates were derived for the three major utilities serving customers in the state: Montana Power Company (electricity and natural gas), Montana-Dakota Utilities (electricity and natural gas), and Pacific Power and Light (electricity). For replacement revenue, the analysis included a 5% excise tax on the delivered price of electricity and natural gas and, in the alternative, a 2.5 mills kilowatt hour tax on the consumption of electricity and a 0.25 mills dekatherm tax on the consumption of natural gas.

On the electric utility side, the amount of replacement revenue from a 5% excise tax or kilowatt hour tax imposed on MPC customers is a little over \$17 million, or about \$3 million less than the amount required to offset the property tax rate reduction. A 5% excise tax would shift the relative tax burden to commercial customers by a relatively small amount, whereas the kilowatt hour tax would shift the relative tax burden to industrial customers by a larger amount.

The excise tax or commodity tax imposed on PP&L and MDU customers raises more revenue than is required to offset the property tax revenue attributable to their in-state customers. As is the case with MPC, there would be a shift in the relative tax burden to industrial customers under a kilowatt hour tax.

Adding the increase in the electric energy producers' license tax shows that in 1997 the revised tax structure would have raised about \$2.8 million less than the current structure. The revenue loss associated with the lower consumption tax on MPC customers and with the loss attributable to foreign utilities that is not fully made up by the increase in the generation tax are partly offset by the somewhat higher consumption taxes on PP&L and MDU customers.

The replacement revenue derived from the natural gas utilities (either under a 5% excise tax or dekatherm tax) is approximately revenue neutral overall, but there would be a tax shift to MDU customers.

MECA Offers Proposal...The second proposal was developed by the Montana Electric Cooperative Association (MECA). There are two elements in the MECA proposal. First, the current tax rates on transmission and distribution property (3% for rural electric cooperatives and 12% for electric utilities) would remain in effect. The rationale for leaving the tax rates the same is that investor-owned transmission

and distribution property is still regulated under restructuring, and property taxes may be recovered through cost of service rates. However, the proposal would attempt to equalize the tax burden of rural electric cooperative property by adjusting taxes paid based on kilowatt sales per dollar invested in transmission and distribution facilities and by customer density per mile of line. The intended effect of this part of the proposal would be to equalize the tax burdens faced by Montana customers of electricity regardless of whether they live in urban areas or low density rural areas.

Senate Bill 390 provided for competition in the generation and retail sale of electricity. As such, the second part of the MECA proposal recommends imposing a franchise fee on the wholesale transmission of electricity in Montana to offset any loss in the value of generation assets as the result of the sale and reclassification of those assets for property tax purposes. In addition to Montana Power, Puget Sound Energy Corp. and Portland General have decided to sell their interest in the Colstrip electric generation units. The franchise fee would be imposed at the point electricity first enters the Montana transmission system and would be imposed on all electricity generated in Montana as well as on imported electricity. The level of the franchise would depend on the value of the generation assets following the sale. The operative assumption is that the new owner or owners of the assets would be locally assessed and taxed at 6% of market value. If the assets (including coal-fired generators and hydroelectric plants), for example, sold for book value, the franchise fee would have to raise approximately \$8 million to offset the estimated loss in taxes associated with the sale. On the other hand, if the assets sell for twice book value, the need for a replacement tax would be minimized. A smaller replacement tax may still be necessary to offset the anticipated reduction in the unit value of other centrally assessed electric utility property.

Committee Requests Bill Drafts to Implement Proposals...The Committee requested that three bill drafts be prepared for discussion purposes. The first draft would implement the proposal to reduce the tax rate on all class nine property from 12% to 6% and impose selective excise taxes on electric and natural gas consumption and intrastate telecommunication services, impose a license fee based on gross receipts on oil and natural gas pipelines, and increase the electric energy producers' license tax to \$.0008. The second draft would implement the MECA proposal. The third proposal would combine elements of each of the first two drafts. That is, impose an excise tax on the consumption of electricity and impose a transmission franchise fee in lieu of increasing the electric energy producers' license tax. The second and third bill drafts will not include the revised tax schemes for natural gas consumption, telecommunications services, or oil and gas pipelines, but will be incorporated by inference for Committee discussion.

The Committee requested that the drafts be provided by September 4 to the various stakeholders in the process. The Committee also requested that interested persons provide written comments on the proposals by September 18 so that the Committee could review the comments before the September 23 meeting.

Other Committee Business...The Department of Revenue presented an update of

the META project and a demonstration of one-stop business licensing. The Committee reviewed the activities of the Revenue Estimating Subcommittee and the various proposals being considered by the Interim Property Tax Committee.

Next Meeting Set for Sept. 22 and 23...The Committee is scheduled to meet Tuesday, September 22 and Wednesday, September 23 in Room 104 of the State Capitol. Tuesday afternoon agenda items include an update on the new method of taxing motor vehicles, the implications of a recent State District Court decision on the property tax phase-in provisions contained in Senate Bill No. 195, a proposal to revise the structure of legislative interim committees, and the intention of the Department of Revenue to impose a beneficial use tax on contract water sales to certain customers of the Butte municipal water system.

The Wednesday meeting will focus on a discussion of the bill drafts to revise the taxation of class nine property. Committee staff will develop a mailing list of interested persons to receive copies of the drafts. Other persons who want to receive copies of the drafts should contact Jeff Martin at <jmartin@state.mt.us> or by calling (406) 444-3064.

LEGISLATIVE FINANCE COMMITTEE

Committee to View "Big Picture" in September...The Legislative Finance Committee will meet on September 24 and 25, commencing at 9:00 a.m. on Thursday in Room 325 of the Capitol. The Thursday morning session will include the biennial "Big Picture" report from Legislative Fiscal Division (LFD) staff and a general fund status report. The Committee will move to Room 104 for the remainder of its meeting on Thursday afternoon and on Friday.

The "Big Picture" report will provide preliminary general fund present law budget projections for the 1999 biennium. The projections are based on present law levels of need, i.e., the amount necessary to continue programs and services at the level of service authorized by the previous Legislature. These will include caseload and workload increases, as well as school enrollment projections. Present law budget projections will be compared against preliminary revenue estimates to provide a projection of fund balance at the end of the biennium. In addition to the "Big Picture" projection of present law, the LFD staff will present a report on preliminary new proposals from state agencies. The objective of these presentations is to provide the Committee and the Legislature with a broad brush preliminary assessment of major budget issues and availability of general fund resources versus needs and requests.

Other Committee Business...Other topics scheduled for discussion at the September meeting are:

- Highways Special Revenue Account cash flow update;
- Mental Health Managed Care update;
- Status of MT PRRIME budget module and accounting/human services

modules;

- SB 378 Subcommittee recommendations;
- Transportation Funding Study Committee recommendations;
- State Fund's projected date for elimination of old fund liability tax;
- Status of HB 188 Information Technology projects; and
- Budget amendments/SB 19 operating plan changes.

THE BACK PAGE

The 1997 Legislature directed an interim committee to study and recommend minimum standards for correctional facilities, including county jails, state prisons, regional prison facilities, juvenile detention facilities, and private detention facilities. The Legislature believed that minimum standards, consistent with fundamental civil and constitutional rights, would restore public confidence in the correctional system by ensuring that the standards would provide for public safety, crime prevention, and reformation and punishment of offenders.

This month's "**The Back Page**" is excerpted in part from "Correctional Standards and Limitations on Confinement", a report prepared for the Correctional Standards and Oversight Committee.

CORRECTIONAL STANDARDS AND INMATE RIGHTS

by Susan Byorth Fox, Research Analyst
Valencia Lane, Legislative Attorney
Legislative Services Division

INTRODUCTION

Correctional standards exist by virtue of the fact that confined persons or inmates have lost certain rights by virtue of their actions, but retain some fundamental rights. The rights of inmates derive from the United States Constitution and federal laws, including the Juvenile Justice and Delinquency Prevention Act for juveniles, from state constitutions and laws, and from court cases that interpret each of these sources.

A prison inmate does not lose all of the inmate's constitutional rights upon incarceration. Given a valid conviction, a criminal defendant is constitutionally deprived of liberty to the extent that the state may confine and subject the inmate to the rules of its prison system so long as the conditions of confinement do not otherwise violate the Constitution. The inmate retains those rights that are not inconsistent with the inmate's status as a prisoner or with the legitimate penological objectives for the corrections system. The inmate does not retain those rights that are inconsistent with the inmate's status as a prisoner or with the legitimate penological objectives of the corrections system. Valid penological objectives include deterrence of crime, rehabilitation of inmates, and institutional security. The fact of confinement and the needs of a penal institution impose limitations on constitutional rights. These limitations are implicit in incarceration. While persons imprisoned for crimes lose many of their constitutional rights, they do not lose all protections of the

Constitution. Inmates must be accorded those rights not fundamentally inconsistent with imprisonment itself or incompatible with the objectives of incarceration. Inmates must be furnished with adequate food, clothing, shelter, sanitation, medical care, and personal safety.

CONSTITUTIONAL PROTECTIONS

The First, Fourth, Eighth, and Fourteenth Amendments to the U. S. Constitution (and similar provisions of state constitutions) have been applied by courts in determining the proper limits of confinement and restrictions on inmates' rights. Generally, the Eighth Amendment's prohibition against cruel and unusual punishment limits the conditions under which persons may be confined. In addition, the First Amendment protects the freedoms of religion, speech, press, and association. The Fourth Amendment provides protection from unreasonable searches and seizures. The Fourteenth Amendment guarantees that no state may abridge the privileges or immunities of citizens of the United States or deprive any person of life, liberty, or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws. In cases involving juveniles and pretrial detainees, the Fourteenth Amendment's Due Process Clause is generally used, rather than the Eighth Amendment, since these people have not been convicted of a crime. The constitutional standard is whether they have been held under conditions that amount to punishment.

The first ten amendments to the Constitution, the Bill of Rights, apply to Congress and the federal government only. However, the Fourteenth Amendment has been interpreted to extend many of the limitations contained in the Bill of Rights to the states, including, specifically, the First Amendment's guarantees relating to religion, speech and press, assembly, petition for redress of grievance, and association; the Fifth Amendment's privilege against self-incrimination and double jeopardy; the Fourth Amendment's protection against unreasonable searches and seizures; and the Eighth Amendment's protection against cruel and unusual punishment.

The Eighth Amendment has been applied in cases relating to restrictions on cell occupancy, size, and sanitation, requirements for inmates' medical care, and requirements for inmates' exercise, rehabilitation, and recreation. The First Amendment has been applied in cases relating to inmates' right to practice religion, right to mail and correspondence, right to reading material and mass media, and right of association in organizations. The Fourth Amendment has been applied in cases relating to inmates' and pretrial detainees' protection from searches. Inmates are entitled to equal protection under the Fourteenth Amendment. Also, the Fourteenth Amendment's guarantee of due process has been applied to cases involving inmates' right of access to courts, legal assistance, and legal materials, to inmates' liberty interests protected by due process on transfer or release, and to procedures affecting their rights generally.

Pretrial detainees and juveniles have at least the same level of constitutional rights as convicted inmates. Because pretrial detainees have not yet been convicted and juveniles are not "convicted", the Eighth Amendment prohibition against cruel and unusual punishment doesn't apply. Instead, the Due Process Clause of the Fourteenth Amendment applies. If a violation is alleged, the question is whether the conditions or restrictions "amount to punishment" of the detainee or juvenile or otherwise violate the Constitution. In addition to constitutional protections, both federal and state laws specifically apply to the detention of juveniles. For example, the federal Juvenile Justice and Delinquency Prevention Act (JJDPA), 42 U.S.C. 5601, et seq., prohibits certain treatment of detained juveniles and requires certain protections of juveniles, including separate staff for juveniles and separate programming for recreation, education, counseling, health care, dining, sleeping, and general activities. Juveniles cannot be detained in adult jails, and status offenders cannot be detained in secure detention. The improper detention of juveniles, especially status offenders, can be challenged on the basis of a violation of the JJDPA or specific constitutional provisions.

LEGISLATIVE HISTORY OF DETENTION CENTER STANDARDS

Correctional standards, specifically jail or detention center standards, have been recommended numerous times in recent history, and the Correctional Standards and Oversight Committee will be bringing a new recommendation forward to the 1999 Legislature. Juvenile detention standards are implicit to a limited extent in the licensing of juvenile detention facilities. Private prison standards are implicit in recent legislation that requires American Correctional Association standards to be met within the first 3 years of operation.

The history of detention center standards goes back at least 27 years. A 1971 Jail Survey report, published by the Governor's Crime Control Commission in 1972, stated that little or nothing had been done to upgrade most detention facilities since their original construction. At that time, there were 53 county and 21 municipal jail facilities. Thirty-four of 50 county jails were built prior to 1920 and only two were built between 1966 and 1971. The jails were inspected and a majority were judged to be in fair to poor condition. A recommendation was made for the state planning staff to set minimum standards in the four areas of construction, maintenance, physical condition of the jail, and treatment of prisoners. The staff recommendations were to be reviewed by a Corrections Task Force and approved by the Governor's Crime Control Commission and submitted to the Legislature. The recommendation included the appointment of a state jail inspector.

In 1975, 1977, 1983, 1985, 1989, and 1991, legislation for jail standards commissions or inspection programs was introduced to and rejected by the Legislature. In 1981, standards for juvenile detention were introduced to and rejected by the Legislature.

Of the more recent attempts, House Bill No. 282, introduced in the 1989 Legislative Session, would have established state jail standards for Montana. The bill passed through the House on second reading but was referred to the House Appropriations Committee, which reported a "Do Not Pass" recommendation that was endorsed 50-42 by the House of Representatives.

A 1990 jail survey, conducted under the auspices of the Joint Interim Subcommittee on Adult and Juvenile Detention, indicated that there were 36 county jails; nine county, 72-hour lockups; and two city, 72-hour lockups for a total of 47 jails. Slightly under half of the jails surveyed were rated as poor or fair for overall jail conditions. Of all those surveyed, only one jail (2%) was reported to meet current, accepted jail standards, 38% indicated that the jail substantially met current standards, and 60% did not meet standards or did not know whether their jail met any standards.

A June 1990, Legislative Council report on "Adult and Juvenile Detention: Issues and Options" identified an option to establish jail standards and require regular inspection of local jails. It noted that standards could be directly established by statute or adopted through administrative rules. The option also recommended annual inspections.

The 1997 Legislature passed House Joint resolution No. 19 that requested a study of minimum standards for correctional facilities. The study was assigned to the Correctional Standards and Oversight Committee who has made a recommendation to pursue mandatory standards for detention centers (county jails). A Corrections Subcommittee worked with a committee spearheaded by the Montana Sheriffs and Peace Officers Association and composed of sheriffs and jail administrators, representatives from the Montana Association of Counties, and the Department of Public Health and Human Services.

CORRECTIONAL STANDARDS AND OVERSIGHT COMMITTEE RECOMMENDATION

The Correctional Standards and Oversight Committee recommendation includes draft legislation that creates a Detention Center Standards Inspection Program to be administered through the Montana Board of Crime Control, including implementing mandatory jail standards through administrative rule. The underlying philosophy of the program is to assist counties in complying with mandatory standards and through that compliance afford counties greater protection against liability for life, health, safety requirements and preventing violation of inmates' constitutional rights, which is also a liability issue. Some key points of the program include training of inspectors at the Montana Law Enforcement Academy, contracting with an outside entity for the detention center inspections by trained inspectors, and delaying the effective date of enforcement authority until October 2003 to give counties time to review standards and to develop action plans in order to come into compliance.

The standards are policy and procedure oriented. The standards do not mandate nor address correctional management issues, such as inmate privileges, if they have not been found to be a constitutional right, as interpreted through legal decisions, or a life, health, and safety issue. The 1999 Legislature will determine whether or not the time has finally come for mandatory detention center standards.



INTERIM
CALENDAR

UNLESS OTHERWISE SPECIFIED,
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

SEPTEMBER

September 1, Oversight Committee on State Management Systems,
Room 104, 9 a.m.

September 4, EQC Water Policy Subcommittee, Room 108, 9 a.m.

September 7, Labor Day, legal holiday

September 10, Environmental Quality Council, Room 108

September 11, Legislative Council, Room 104

September 12, Correctional Standards and Oversight Committee, Bozeman

September 14, Interim Property Tax Committee, Room 104, 9 a.m.

September 18, Transition Advisory Committee

September 21, Postsecondary Education Policy and Budget Committee,
Room 104, 9 a.m.

September 22-23, Revenue Oversight Committee, Room 104

September 24, Legislative Finance Committee, Room 325, 9 a.m. and
Room 104, 1 p.m.

September 25, Legislative Finance Committee, Room 104, 8 a.m.

September 28, EQC Growth Subcommittee, Room 104

September 30, Gambling Study Commission, Governor's Reception Room,
9:30 a.m.

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